### 112TH CONGRESS 1ST SESSION

# H. R. 3210

To amend the Lacey Act Amendments of 1981 to limit the application of that Act with respect to plants and plant products that were imported before the effective date of amendments to that Act enacted in 2008, and for other purposes.

### IN THE HOUSE OF REPRESENTATIVES

OCTOBER 14, 2011

Mr. Cooper (for himself, Mrs. Bono Mack, and Mrs. Blackburn) introduced the following bill; which was referred to the Committee on Natural Resources

## A BILL

To amend the Lacey Act Amendments of 1981 to limit the application of that Act with respect to plants and plant products that were imported before the effective date of amendments to that Act enacted in 2008, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Retailers and Enter-
- 5 tainers Lacey Implementation and Enforcement Fairness
- 6 Act" or the "RELIEF Act".

#### SEC. 2. FINDINGS.

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- 3 (1) Amendments to the Lacey Act Amendments 4 of 1981 were enacted as part of the Food, Conserva-5 tion, and Energy Act of 2008 (Public Law 110– 6 246).
  - (2) The 2008 amendments were intended to level the playing field for American businesses engaged in the responsible harvest, shipment, manufacture, and trade of plants and plant products whose prices had been undercut by a black market fueled by irresponsible and illegal taking of protected plants around the globe.
    - (3) The 2008 amendments were overly broad and their enforcement as enacted could criminalize actions of a good-faith owner, purchaser, or retailer of a plant or plant product, subjecting them to penalties that include forfeiture, fines, and imprisonment.
    - (4) Sanctions for violating the 2008 amendments should be proportional to the act in violation. An individual who is not in the commercial shipping business should not be held to the same standard of compliance under that Act.
- 25 (5) Individuals fear that they risk incurring 26 those penalties by merely owning or traveling with a

- vintage musical instrument, antique furniture, or another wood product.
- (6) The Department of the Interior and De-partment of Justice have stated "people who un-knowingly possess a musical instrument or other ob-ject containing wood that was illegally taken, pos-sessed, transported or sold in violation of law and who, in the exercise of due care would not have known that it was illegal, do not have criminal expo-sure.".
  - (7) It is necessary to clarify the 2008 amendments so that legally harvested new plant products can enter the market place.
  - (8) Declaration requirements for plant products imported or manufactured prior to May 22, 2008, are unreasonable since the sourcing of plant products was not previously required by law.
  - (9) Federal law enforcement officials should not engage in overzealous enforcement action under the 2008 amendments.
  - (10) It is important to ensure that the appropriate agencies have the necessary funding to implement the current phases of the declaration requirement before considering any future phases.

1	(11) The appropriate agencies have the respon-
2	sibility of providing a publicly accessible database so
3	that everyone can be notified of the foreign laws of
4	countries as they apply to the importation of plants.
5	SEC. 3. TREATMENT OF PLANTS AND PLANT PRODUCTS
6	UNDER LACEY ACT AMENDMENTS OF 1981.
7	(a) Limitation on Application of Act to Cer-
8	TAIN PLANTS AND PLANT PRODUCTS.—The Lacey Act
9	Amendments of 1981 (16 U.S.C. 3371 et seq.) is amended
10	by redesignating section 9 as section 10, and by inserting
11	after section 8 the following:
12	"SEC. 9. LIMITATION ON APPLICATION TO CERTAIN
13	PLANTS AND PLANT PRODUCTS.
10	I MUNIO I IND I MUNI I RODUCIO.
14	"This Act does not apply with respect to—
14	"This Act does not apply with respect to—
14 15	"This Act does not apply with respect to— "(1) any plant that was imported into the
14 15 16	"This Act does not apply with respect to— "(1) any plant that was imported into the United States before May 22, 2008; or
14 15 16 17	"This Act does not apply with respect to— "(1) any plant that was imported into the United States before May 22, 2008; or "(2) any finished plant or plant product the as-
14 15 16 17 18	"(1) any plant that was imported into the United States before May 22, 2008; or "(2) any finished plant or plant product the assembly and processing of which was completed be-
14 15 16 17 18	"This Act does not apply with respect to—  "(1) any plant that was imported into the United States before May 22, 2008; or  "(2) any finished plant or plant product the assembly and processing of which was completed before May 22, 2008.".
14 15 16 17 18 19 20	"This Act does not apply with respect to—  "(1) any plant that was imported into the United States before May 22, 2008; or  "(2) any finished plant or plant product the assembly and processing of which was completed before May 22, 2008.".  (b) LIMITATIONS ON APPLICATION OF PLANT DEC-
14 15 16 17 18 19 20 21	"This Act does not apply with respect to—  "(1) any plant that was imported into the United States before May 22, 2008; or  "(2) any finished plant or plant product the assembly and processing of which was completed before May 22, 2008.".  (b) Limitations on Application of Plant Declaration Requirement.—Section 3(f) of such Act (16)
14 15 16 17 18 19 20 21	"This Act does not apply with respect to—  "(1) any plant that was imported into the United States before May 22, 2008; or  "(2) any finished plant or plant product the assembly and processing of which was completed before May 22, 2008.".  (b) Limitations on Application of Plant Declaration Requirement.—Section 3(f) of such Act (16 U.S.C. 3372(f)) is amended—

1 as in effect on the date of enactment of the Retailers 2 and Entertainers Lacey Implementation and Enforcement Fairness Act)" after "plant"; and 3 4 (2) in paragraph (3)— (A) by inserting "(A)" before "Paragraphs 5 6 (1)"; and 7 (B) by adding at the end the following: "(B)(i) In the case of a plant product that is derived 8 from a tree, a declaration under paragraph (1) or (2) is 10 not required to include information referred to in subpara-11 graph (A), (B), or (C) of that paragraph unless the plant product is solid wood. 12 13 "(ii) The Administrator of the Animal and Plant Health Inspection Service shall issue regulations that de-14 15 fine the term 'solid wood' for purposes of this subpara-16 graph". 17 (c) CIVIL FORFEITURES.—Section 5(d) of such Act (16 U.S.C. 3374(d)) is amended to read as follows: 18 19 "(d) CIVIL FORFEITURES.— 20 "(1) IN GENERAL.—Except as provided in sub-21 section (d), civil forfeitures under this section shall 22 be governed by chapter 46 of title 18, United States 23 Code. "(2) Limitation on innocent owner de-24 25 FENSE NOT APPLICABLE.—The limitation set forth

in paragraph (4) of section 983(d) of title 18, 1 2 United States Code, does not apply with respect 3 to-"(A) any imported plant acquired by a per-4 5 son who satisfies the requirements for treat-6 ment as an innocent owner set forth in para-7 graph (1) and paragraph (2) or (3), as applica-8 ble, of such section; and "(B) any plant or plant product acquired 9 10 by a person who satisfies such requirements.". SEC. 4. REDUCED PENALTIES FOR CERTAIN FIRST OF-12 FENSES. Section 4 of such Act (16 U.S.C. 3373) is amended 13 14 by redesignating subsection (e) as subsection (f), and by 15 inserting after subsection (d) the following: 16 "(e) CIVIL PENALTY FOR FIRST OFFENSES INVOLV-ING PLANT.— 17 18 "(1) IN GENERAL.—Notwithstanding 19 sections (a) and (d), any person who violates sub-20 section (a), (d), or (f) of section 3 with respect to 21 any plant and who in the exercise of due care should 22 know that the plant was taken, possessed, trans-23 ported, or sold in violation of, or in a manner unlaw-24 ful under, any underlying law, treaty, or regulation

1 may, for the first such violation, be assessed a civil 2 penalty by the Secretary of not more than \$250. 3 "(2) OTHER CIVIL PENALTY **PROVISIONS** 4 APPLY.—Except as provided in paragraph (3), para-5 graphs (2), (3), (4), (5), and (6) of subsection (a) 6 shall apply with respect to an offense for which a 7 penalty may be assessed under this subsection. "(3) Treatment as single offense.—Not-8 9 withstanding the second sentence of subsection 10 (a)(4), all violations by a person for which a penalty 11 may be assessed under this subsection that arise 12 from a single act or omission shall be treated as a 13 single offense.". 14 SEC. 5. REVIEW AND REPORT. 15 Section 3(f) of such Act (16 U.S.C. 3372(f)) is 16 amended— 17 (1) in paragraph (4), by striking "Not later 18 than 2 years after the date of enactment of this sub-19 section," and inserting "Not later than 180 days 20 after the date of enactment of the Retailers and En-21 tertainers Lacey Implementation and Enforcement 22 Fairness Act"; and 23 (2) in paragraph (5)— 24 (A) by striking "Not later than 180 days 25 after the date on which the Secretary completes

1	the review under paragraph (4), the Secretary"
2	and inserting "Not later than 180 days after
3	the date the Secretary completes the review
4	under paragraph (4), the Director of the United
5	States Fish and Wildlife Service";
6	(B) by striking "and" after the semicolon
7	at the end of subparagraph (B);
8	(C) by striking the period at the end of
9	subparagraph (C) and inserting "; and; and
10	(D) by adding at the end the following:
11	"(D) an evaluation of the feasibility of cre-
12	ating and maintaining a publicly available data-
13	base of laws of foreign countries from which
14	plants are exported.".
15	SEC. 6. FUNDING FOR IMPLEMENTATION OF PLANT DEC-
16	LARATION REQUIREMENT.
17	The head of each Federal agency responsible for im-
18	plementing the Lacey Act Amendments of 1981 (16
19	U.S.C. 3371 et seq.) shall, from amounts otherwise avail-
20	able, allocate sufficient amounts to implement section 3(f)
21	of the Lacey Act Amendments of 1981 (16 U.S.C.
22	3372(f)), including for processing of all declarations filed
23	under that section.

### SEC. 7. STANDARD CERTIFICATION PROCESS FOR PLANTS 2 AND PLANT PRODUCTS. 3 The Director of the United States Fish and Wildlife Service, the Administrator of the Animal and Plant 4 5 Health Inspection Service, and the head of each other Federal agency responsible for implementing the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.) shall 8 issue regulations to establish a standard certification proc-9 ess under that Act for plant and plant products (as those terms are used in that Act) legally harvested, imported, 10 or manufactured after May 22, 2008, that considers indi-11 vidual item certification and individual manufacturer, importer, and retailer certification for purposes of sale and 14 resale. SEC. 8. FEDERAL TRADE COMMISSION REVIEW. 16 Not later than 180 days after the date of the enactment of this Act, the Federal Trade Commission shall— 17 18 (1) conduct a review of competitiveness in the 19 domestic market for raw materials for the manufac-20 ture of musical instruments and the impact of the 21 amendments made by this Act to the Lacey Act 22 Amendments of 1981 (16 U.S.C. 3371 et seq.) on 23 such competitiveness; and 24 (2) submit to Congress a report containing the

results of the review.

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